

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 576 of 2006

In

COMPANY PETITION No. 249 of 1996

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COMPANY PETITION No. 249 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of
the judgment ?

Whether this case involves a substantial question of
4 law as to the interpretation of the constitution of
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NAMISHABEN M SHAH & 2 - Applicant(s)

Versus

O.L. OF M/S. RAINBOW INDUSTRIES PVT. LTD. & 4 -

Respondent(s)

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Appearance :

MR SP MAJMUDAR for Applicant(s) : 1 - 3.

OFFICIAL LIQUIDATOR for Respondent(s) : 1,

MR SAMIR B BUNDELA for Respondent(s) : 1,

MR AR MAJMUDAR for Respondent(s) : 2,

MR INDRAVADAN PARMAR for Respondent(s) : 3,

MR GOPESH J SONI for Respondent(s) : 4,

MR HARDIK S SONI for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 12/03/2007

ORAL JUDGMENT

In view of the fact that Rent Suit No.416 of 1993 is pending in the Court of Small Causes Court at Baroda at the instance of the land owner Ramaben Babubhai Choksi, Shri SP Majmudar, learned advocate appearing on behalf of the applicants sought permission to withdraw the present application with a liberty to file appropriate application for seeking permission under section 446 of the Companies Act, 1956 to proceed further with the Rent Suit No. 416 of 1993 after joining the Official Liquidator as party to the said proceedings. However, subsequently, Shri Majmudar has mentioned before the Court that as the said withdrawal is without getting consent from the applicants, he has requested to decide the present company application on merits and pass an appropriate order. That is how the present application is now decided and disposed of on merits.

2. By way of the present Judges summons, the applicants claiming to be the owners of the land in question on the basis of the Will executed by one Ramaben Babubhai Choksi, the original land owner have prayed for an appropriate order directing the Official Liquidator to release the possession of open land admeasuring 15,000 sq ft. belonging to revenue survey No.238, Hissa No.2/1 situated at Pratapnagar, Vadodara since the

said land is not the property of the company.

3. It is the contention on behalf of the applicants that one Ramaben Babubhai Choksi was the owner of the land in question which was given on lease to the company in liquidation. It is further submitted that said Ramaben had by Will dated 31-12-1992 bequeathed certain property to the daughter of the applicant. It is further submitted that the Rent Suit No.416 of 1993 filed by said Ramaben in the Court of learned Small Causes Court at Vadodara against the company which is still pending. It is further submitted that after the order of winding up has been passed of the company in liquidation, the Official Liquidator has taken over the possession of the said property and as the said property does not belong to the company in liquidation, it is requested to grant the relief as prayed for. Shri Majmudar has relied upon the decision of the Hon'ble Supreme Court in the case of **Ravindra Ishwardas Sethna and another V. Official Liquidator, High Court of Bombay and another** reported in **AIR 1983 SC 1061** in support of his above submission and the prayer.

4. The Official Liquidator has submitted its report objecting to grant of the relief as prayed for in the present application. It is further submitted by the Official Liquidator that the applicant is required to take a letter of Administration from the competent authority under the Indian Succession Act, and thereafter only they can make a claim regarding possession of the disputed land which is in possession of the Official Liquidator. It is also further submitted that the applicants have not joined the other beneficiaries whose rights would also be affected by the relief sought for by the applicants. It is further submitted that the applicants are also

required to join the executor, Shri Ashwin M. Vaidh. It is submitted that the proper and necessary applicant is sole executor who is not before this Court, who has been given power to administer and manage the property claimed to be of deceased Ramaben as per her alleged Will and wishes. It is further submitted that deceased Ramaben had filed Rent Suit No.416 of 1993 before the learned Small Causes Court at Vadodara, where it is stated that the company in liquidation is using the said land which is actually located at surrounding factory premises by paying monthly rent to the deceased Ramaben at the rate of Rs.2000/- per month for the land around the factory and building. It is further submitted that in the suit, said Ramaben had sought possession from the company and whether the original landlord is entitled to possess, is yet to be decided in the aforesaid rent suit and unless and until a decree is passed by the competent Court, the applicants cannot get the possession. It is submitted that granting of the relief which has been prayed in the present application would be allowing the suit without trial and passing a decree. It is also further submitted that the company has been wound up by this Court by order dated 5-12-2001 and the Official Liquidator has taken over the possession of the Registered Office and factory situated at Pratapnagar, Vadodara on 13-5-2002. It is further submitted by the Official Liquidator that after following all the procedure with the permission of this Court, the Official Liquidator published advertisement in various newspapers for sale of the assets and properties of the company in liquidation on 16-1-2004. It is further submitted that thereafter the Official Liquidator published another advertisement for sale of land and building of Registered Office and the factory land of subject company on 1-12-2005 but the applicants as well as the executor appointed by the deceased

Ramaben had never raised any objection nor intimated the Official Liquidator regarding present claim of ownership of the land in possession of the Official Liquidator as land of the company in liquidation. It is also further submitted that the assets of the company in liquidation were financed by the Indian Overseas Bank as well as the Bank of Baroda and in respect thereof, they have filed affidavit of proof of debt with the Official Liquidator. It is submitted that the subject land was mortgaged by the company in liquidation by way of equitable mortgage on 2-3-1976 in favour of the Bank of Baroda, Mandvi branch, Baroda and thereafter extension of equitable mortgage had been created from time to time for further finance by the Bank of Baroda and jointly the Indian Overseas Bank, Vadodara. It is also further submitted that before making the claim regarding possession of the disputed land, the applicants as well as two other beneficiaries are required to file partition suit before the competent Court and are required to get their shares divided if they have got any right on the basis of the alleged Will. Therefore, it is requested to dismiss the present application.

5. Shri Indravadan Parmar, learned advocate appearing on behalf of one of the secured creditors has opposed the grant of any relief in the present application by submitting that when the rent suit is pending before the competent Court in which possession from the company has been sought unless the rights are adjudicated by the competent civil Court, the applicants are not entitled to the possession as prayed for in the present application.

6. Heard the learned advocates appearing on behalf of the parties.

7. The applicants have prayed for an appropriate order directing the Official Liquidator to release the possession of open land admeasuring 15,000 sq ft. belonging to revenue survey No.238, Hissa No.2/1 situated at Pratapnagar, Vadodara on the basis of the Will executed by the deceased Ramaben. On going through the said Will, it appears that to carry out directions and the wishes of the deceased, one executor has been appointed. Admittedly, the company in liquidation was the lessee, the deceased during her life time had filed Rent Suit No.416 of 1993 claiming the possession from the company which is pending in the Court of Small Causes at Baroda. Under the circumstances whether the original landlady is entitled to get the possession from the company is yet to be adjudicated upon and decided by the competent Court. Granting of relief of possession which is prayed for in the present application would be allowing the suit by this Court and passing a decree without any trial by the competent Court which is not permissible. The remedy available to the applicants on the basis of the alleged Will and/or if any rights in their favour would be to move an appropriate application permitting them to proceed further with the suit under section 446 of the Companies Act, 1956. Even it is not known whether the heirs of deceased Ramaben are brought on record of Rent Suit No.416 of 1993 or not. It is also required to be considered whether the applicants herein can be brought on record as plaintiffs as heirs and legal representatives of deceased Ramaben or not. Even for that purpose, the applicants might have to take a letter of administration from the competent Court. Unless and until all these issues are considered and a decree is passed by the rent Court after joining the Official Liquidator as party to the said suit, the relief of possession as

sought for by the applicants in the present application cannot be granted. The judgment of the Hon'ble Supreme Court in the case of Ravindra Ishwardas Sethna and another (supra) relied upon by the learned advocate appearing on behalf of the applicants is not applicable to the facts of the present case. There the question before the Hon'ble Supreme Court was that the Official Liquidator of the company on its being wound up, took the possession of the premises of the company and subsequently by the order of the High Court entered into a caretaker agreement with another party and gave possession of the premises to him on compensation and on terms and conditions set out in the agreement and on such facts, the Hon'ble Supreme Court has observed that the Official Liquidator on the basis of the order passed by the High Court could not have entered into such an agreement and the same was not permissible. The ratio of the judgment is required to be considered considering the dispute and/or controversy raised in the case and any few observations without their being any *lis* cannot be used by the counsel.

8. For the reasons stated above and more particularly when the suit is pending before the learned Small Causes Court at Baroda for the same relief i.e. with regard to getting the possession from the company, the applicants of the present application are not entitled to any relief which is prayed in the present application. Hence, this application is dismissed. No costs.

(M.R. SHAH, J.)

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